IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 71 of 2004

For Approval and Signature:
HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHBHAI JAMIYATRAM - Petitioner(s)

Versus

NIRMALABEN JAMNADAS KORANI & 2 - Respondent(s)

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Appearance :
MR RN SHAH for Petitioner No(s).: 1.
MS SD RAMI for Respondent No(s).: 1,2.
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date : 03/08/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 15th December, 2003 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No.149/2003, the appellant (defendant no.1 in H.R.P. Suit No.196/2001) has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, **"the Rent Act"**).

The petitioner-defendant is the tenant in the suit shop bearing City Survey No.1235/1 admeasuring 22.60 sq.meters situated at Khadiya. The suit shop was of the joint ownership of one Surendra Ratilal and one Jagdish Vithhaldas Sampat and Shailesh Vithhaldas Sampat. The said Surendra Ratilal and the said Jagdish Sampat and Shailesh Sampat had undivided one-half share in the suit shop. The aforesaid Surendra Ratilal sold his one-half undivided share in the suit shop to the plaintiff under a registered sale-deed dated 13th October, 1997. Pending the suit the aforesaid Jagdish Sampat and Shailesh Sampat sold their one-half undivided share in the suit shop to the plaintiff by a registered sale-deed dated 8th November, 2001. A notice of attornment was given to the defendant by the aforesaid Surendra Ratilal on 1st November, 1997. Under the said notice the defendant was called upon to pay the monthly rent of Rs.150=00 paid to the said Surendra Ratilal to the plaintiff. It appears that the defendant was in arrears of rent in connection with the said one-half share in the suit shop purchased from the aforesaid Surendra Ratilal. The plaintiff, therefore, gave notice of demand on 1st January, 2001 and demanded that the defendant shall remit the sum of Rs.5,550=00, the amount of arrears of rent from 1st

November, 1997 to 31st December, 2000. The said notice remained unanswered. The plaintiff instituted H.R.P. Suit No.196/2001 in the Court of Small Causes, Ahmedabad for recovery of the possession of the suit shop on the ground, inter alia, that the defendant was the tenant in default and that he was not ready and willing to pay the rent. The suit was contested by the defendant vide written statement (Exh.14). He denied the allegations made in the plaint. He also challenged the maintainability of the suit on the ground of non-joinder of necessary parties. Pending the suit the plaintiff moved application Exh.16 under Section 11(4) of the Rent Act. The said application was contested by the defendant vide reply Exh.20. The learned trial Judge, by order dated 12th February, 2003 made below application Exh.16, directed that the defendant shall deposit Rs.7,300=00 on or before 20th March, 2003 and that the defendant shall deposit future rent of Rs.150=00 per month from 1st January, 2003 within ten days from the day of accrual of rent. It was further observed that in the event the defendant failed to comply with the said order his defence would be struck off (i.e. the defendant would not be entitled to appear in and defend the suit without the leave of the Court). It is not in dispute that since the said order the defendant did not appear before the Court;

he did not comply with the said direction nor did he apply to the Court for extension of time to deposit the amount. The learned Judge allowed the suit by judgment and order dated 22nd August, 2003 and passed decree for possession and for a sum of Rs.10,350=00, the amount of arrears of rent and the mesne profits in favour of the plaintiff. Feeling aggrieved, the defendant preferred Civil Appeal No.149/2003 before the Appellate Bench, Small Causes Court, Ahmedabad. The said Appeal came to be dismissed on 15th December, 2003. Therefore, the present Revision Application.

Mr.Shah has submitted that what the plaintiff had purchased from the aforesaid Surendra Ratilal was one-half undivided share in the suit shop. Admittedly, the other one-half undivided share in the suit shop was purchased by the plaintiff on 8th November, 2001 after the date of the suit. On the date of the suit the plaintiff had no right, title or interest in the other one-half share of the suit shop which then was of the ownership of the above referred Jagdish Sampat and Shailesh Sampat. Nevertheless, the decree for possession has been passed in favour of the plaintiff with respect to the entire suit shop. He has submitted that the decree for possession passed against the defendant requires to be

quashed and set-aside on this ground alone.

Ms.Rami has submitted that the notice of demand was given to the defendant with respect to one-half share in the suit shop purchased by the plaintiff from the aforesaid Surendra Ratilal. In the plaint also the plaintiff had made a specific averment that the plaintiff had a right of ownership over one-half undivided share in the suit shop. She has submitted that the decree for possession has been passed in favour of the plaintiff in terms of the prayer made in the plaint. She has submitted that the decree has necessarily been passed with respect to one-half share the plaintiff had purchased.

The petitioner-defendant Rameshbhai Jamiyatram is present in the Court. It is submitted that the suit shop abuts on the main road and is 8 feet wide and 35 feet deep.

With the consent of the said Rameshbhai Jamiyatram and with the consensus arrived at by the learned advocates the Civil Revision Application is disposed of in the following terms :-

(1) It is declared that, under the impugned decree, the

plaintiff has a right to recover possession of one-half of the suit shop. (2) The defendant shall retain the possession of front half of the suit shop admeasuring 8' wide x 17.5' deep. (3) The defendant shall, on or before 30th November, 2005, handover the vacant possession of the rear one-half of the suit shop admeasuring 8' x 17.5'. (4) The defendant shall construct a partition wall between the front half and the rear half of the suit shop at his own cost. (5) The plaintiff shall have no right of way through the front half of the suit shop. (6) The defendant shall pay a monthly rent of Rs.300=00 and taxes to the plaintiff till he hands-over the possession of the rear half of the suit shop to the plaintiff. (7) On and from the date the defendant hands-over the vacant possession of the rear half of the suit shop as agreed he shall be liable to pay a monthly rent of Rs.150=00 and the proportionate taxes. (8) In the event the defendant fails to handover the vacant possession of the rear half of the suit shop to the plaintiff on or before 30th November, 2005 as agreed, the plaintiff shall be entitled to execute the decree for possession with respect to the rear half of the suit shop admeasuring 8' x 17.5'.

Both the learned advocates agree that after the defendant hands-over the vacant possession of the rear

half of the suit shop to the plaintiff a fresh rent note be executed with respect to the front half of the suit shop admeasuring 8' x 17.5' for a monthly rent of Rs.150=00 and proportionate taxes.

Learned advocate Mr.Shah has submitted that pending the appeal before the lower appellate Court the defendant has deposited a monthly rent of Rs.300=00 payable upto 30th November, 2006. It is agreed by the learned advocates that the plaintiff shall recover a monthly rent of Rs.150=00 from the defendant for the period from 1st November, 1997 till 7th November, 2001. It is further agreed that the plaintiff is entitled to recover a monthly rent of Rs.300=00 from 8th November, 2001 till today and till the defendant hands-over the vacant possession of one-half of the suit shop as recorded hereinabove. In the circumstances, it is directed that the amount deposited by the defendant be withdrawn by the plaintiff against the rent due and payable to the plaintiff as aforesaid and the excess amount, if any, shall be adjusted against the future rent.

Subject to the above direction, the Revision Application is disposed of. Rule is discharged. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

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